the relatives do not wish to be burdened with the devise of a rent free house. Accordingly I direct that the net proceeds will be invested in the names of the consenting trustees to hold same on trust for Eddie Polo.

Order accordingly.

Solicitors for the trustees (applicants) *Drew & Napier.*

Solicitors for Eddie Polo (respondent)— *Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

November 3, 1938.

IN RE CHUA YAN KENG'S TRUSTS. CHUA LIP KEE

v.

CHUA LIP CHEE AND OTHERS.

[MALACCA ORIGINATING SUMMONS No. 6 of 1937 CONSOLIDATED With No. 17 of 1905]

Receiver—Remuneration—Costs charges and expenses.

A receiver who is remunerated a percentage of his collection is not entitled to charge in addition to such remuneration sums paid by him for clerical assistance, salary of a bill collector, office expenses, stationery or lighting, though in a proper case the Court might approve of a salary to a rent collector.

REFERENCE FROM REGISTRAR.

John Laycock for defendants, the trustees.
S. C. Gono for Chua Lip Giap.
W. F. S. Zehnder for Chua Siow Liat.
D. N. Bannerjea for Chua Poh Choo.
F. R. Massey for Chua Lip Kee.

Cur. Adv. Vult.

PEDLOW, J.—This was a reference to the Court under O. 51, r. 20 by the Registrar for a decision on principle and, if necessary, on quantum as to the falsification of account No. 210 in the estate of Chua Yan Keng deceased, originating summons No. 6 of 1937 and No. 17 of 1905.

The main point at issue was whether a receiver appointed by the Court on a percentage of receipts basis of remuneration was entitled to debit the estate with the cost of keeping the accounts, of a bill collector, of a proportion of the lighting of his office, of the cost of stationery and of certain other minor charges.

The learned Registrar took the view that such charges could and should be allowed and in this he is fortified by the fact that such charges have been allowed in this case in the past by this Court for the last 22 years. I have been trying, however, to find any local authority for that practice but I have failed to do so. Were the practice correct it would mean, if pushed to its logical conclusion, that a man who undertook a receivership from the Court could then employ a firm of professional receivers such as Estate & Trust Agencies to do all the work for him, charge their commission as expenses and put in his own pocket the entire percentage allowed him by the Court without having himself to do anything more than sign his name to documents supplied by his sub-agent.

The amount allowed by the Court in the present instance is 5%. The accounts show that the actual amount debited to the estate is just about 18%. Looking at things from general principles one would think that in return for this remuneration of 5% a receiver should at least collect the rents of the estate. I find it difficult to find any explicit authority in the matter. I was referred to two cases, both unreported decided in Singapore, and both of which are against the view of the learned Registrar. Those cases were the *Sultan of Siak's case* and Singapore Suit No. 1068 of 1932. Text books are not very helpful so far as detailed illustrations go. There is a phrase which occurs in both Woodroffe and in Kerr which is that a receiver is entitled to his costs, charges and expenses properly incurred in the discharge of his duties. In my opinion those costs, charges and expenses are not the costs, charges and expenses of getting in the rents and profits. So far as can be made out "the costs" there are legal costs properly incurred, and "charges and expenses" seem to refer to outgoings on the upkeep of the estate, repairs to houses and so on. There is an Indian case which is some authority for the proposition that in suitable cases the expenses of a clerk may be allowed, but it seems equally clear from that case that the clerk may not be allowed unless the Court has specially authorised it. There was no such authority here unless it may be said that there was implied authority in the fact that the accounts were passed in this form for so many years, but I do not think that it is the correct view to take of the matter that there was any implied authority. It would seem to be the custom at any rate that the receiver's remuneration is not fixed until he has filed his first accounts and they have been passed. He is apparently debarred at law from receiving any remuneration until this has been done. It is not unreasonable to think that the basis of that procedure is that the Court may see what amount of work is really involved before it finally determines what the amount of a percentage or other basis of remuneration should be.

In the text books it is everywhere emphasized that special expenses incurred may be allowed. The inference from that would seem to be that ordinary current expenses are not so allowed and that when a receiver undertakes to look after an estate for a certain percentage of the receipts he must himself bear such ordinary items as clerical assistance, office expenses, stationery and, I would add, the actual collecting of the rents unless the Court, considering the nature of the estate, thinks that the appointment of a rent collector at the expense of the estate is justified. There appears to be authority for saying that unusual or exceptional travelling expenses should be allowed by the Court and all proper expenses in the maintenance and upkeep of the property. There is also apparently authority for saying that the costs (by that I think is meant legal costs) incurred in passing the receiver's accounts before the Registrar should be allowed out of the estate.

The items queried in the present falsification come under five heads. The first is the purchase of carbon paper for typing accounts. That in my opinion should be disallowed. The second item is a proportion of the cost of the lighting of the office of the receiver. That I think should also be disallowed. The third item is the salary, $10 a month, for keeping the account books and doing general office work and that, I think, should also be disallowed. Even if not wholly disallowed, as it is, I think the amount is greatly excessive. The accounts for each month looked at over a number of months never amounted to more than three double pages and sometimes to less. The fourth item is the salary of a rent collector. Here again the item must be disallowed, though I am of opinion that in a proper case and on a proper application to the Court the Court might approve of such a salary to a rent collector. There is no application in that respect before me. In my opinion the property here would seem to be all situated, except Bukit Gong, inside the Municipal limits and no *prima facie* case appears where special salary to a rent collector should be allowed. The fifth item is a kind of omnibus item. Travelling $5 is queried. It is clear from the text books that reasonable travelling should be done free by the receiver but extraordinary or special travelling should be allowed him. If this is ordinary travelling it should be disallowed. There is a monthly item of $2 charged for stamps. If that is a correct charge it should be allowed but if that be a round figure and if a similar amount is actually expended only such sum should be allowed as has really been expended. There is one further item of $6 a month for a sweeper for keeping the office clean. The evidence is that this office is also used as a shrine for the family tablets and I think then that this item may reasonably be allowed to a receiver as money spent on the proper upkeep of the estate. It is well known that Chinese regard their ancestral tablets with the greatest possible reverence.

I have already stated that the nett result has been that this estate has had to pay the receiver's expenses amounting to, for a period of roughly two years, about 18% instead of 5%. The receiver's commission amounts to a total of $808 and his expenses for clerk, stationery and bill collector, to $1,900. That could scarcely have been the state of affairs contemplated by the Court when it first gave its ruling as to the percentage to be allowed.

I hold then that normally a receiver paid on a percentage of collections of an estate basis is not entitled to charge for clerical assistance, salary of a bill collector, office expenses, stationery or lighting.

I allow all the parties represented at the hearing of this summons in chambers their taxed costs out of the estate.

Order accordingly.

Solicitors for defendants:—
Braddell Brothers.

Solicitors for Chua Lip Giap:—*Rogers & Son.*
Solicitors for Chua Biow Liat:—
Zehnder Brothers.

Solicitors for Chua Lip Kee:—
Allen & Gledhill.

[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., TERRELL, AG. C.J. (F.M.S.), & PEDLOW, J.

December, 9, 1938

REX v. LIM SOON GONG AND TWO OTHERS.

[SINGAPORE MAGISTRATE'S APPEAL No. 63 of 1938]

The Penal Code, s. 379—Theft of sand from foreshore.

The foreshore down to ordinary low water mark is the property of the Crown. The foreshore is in the possession of the Crown though it may not be actually occupied. The protection of the Crown's sand and gravel of the foreshore is within the mischief of Cap. 114. Any person who takes sand from an un-alienated foreshore without authority from the Crown does an act forbidden by section 13 of the Crown Lands Encroachment Ordinance.

Quaere: Whether the sea bed between ordinary low water mark (and/or low water mark of ordinary spring tides) and the outward limit of territorial waters is the property of the Crown.

CRIMINAL APPEAL.